TO THE HONOURABLE

THE

SENATE

AND

HOUSE OF REPRESENTATIVES

OF THE

Commonwealth of Pennsylvania,

IN GENERAL ASSEMBLY MET:

The Memorial of the Subscribers, free people of colour, residing in the City of Philadelphia,

RESPECTFULLY SHEWETH,

That having learned that memorials have been presented to the Legislature, praying for its action to prevent the further immigration of free coloured people into this Commonwealth, and believing that their rights and interests will be injuriously affected by any general enactment on the subject, they feel it to be due to themselves and to their families, respectfully and explicitly to state the view they have been taught to have of their rights, and the estimate they have formed of their own interests. In doing so they are confident they will not lose sight of the respectful deference due to your honourable body; and trust that they may not violate even those feelings, of which, as the result of habit and circumstances, they will not complain. Your Memorialists ask to be listened to in the temper of impartial justice, and no more. They have too long, and too severely felt the pressure of an adverse public sentiment, to hope to be wholly exempt from it now: but coming, as they do, before the legislative wisdom of the Commonwealth, they trust they shall find at least there, an asylum from prejudice and a tribunal that will listen to the voice of truth, and decide in the spirit of justice.

Unapprised, as your Memorialists are, of the specific legislation which is contemplated, they are induced to direct the observations they have to offer to the provisions of the bill, last year reported by a Committee of the house of Representatives, a copy of which is affixed to this memo-

rial; which, as the plan digested to obviate dangers similar to those now apprehended, they are led to suppose, may be the basis of any future legislative action on the subject. To the general object of that bill, as stated in the title, and to its specific provisions, they wish more particularly to direct the attention of the Legislature.

Your Memorialists wish to be distinctly understood, that they appear here in an attitude strictly defensive. Their action on this occasion is not voluntary; and they most explicitly state that it is far from their wish or intention to trouble your honourable bodies with any abstractions or speculations, as to the absolute rights of the coloured man; still less to permit themselves to be regarded as obtrusive claimants for new privileges, or for the exercise of disputed rights. They are not here asking for a declaratory law, to secure to them the right of being assessed or voting. These slumbering privileges need not be awakened now: and your Memorialists have too clear a view of the elementary principles of the Constitution and laws, to believe that they ever ought to be urged here. Whether or no they have such privileges they have always been led to believe is an appropriate question for judicial decision. The coloured population merely ask to be left as they are. They believe they have constitutional rights, and are sure, whatever may be the state of other questions connected with them, that they are at least *citizens for protection*. It will be time enough to repel obtrusiveness, when they do ask for more than they enjoy; and when in asking it, they deserve the repulse. They do not ask it now.

Again, they earnestly remonstrate against any judgment of the Legislature, in examining the merits of the project now before them, on matters which have no connection with their rights; and must be permitted to ask most respectfully, that this question may not be confounded with any other. It is not a question of property in runaway slaves, or the mode of securing it. That subject has been legislated upon, and is at rest. Neither is it a question of pauperism; that too has its appropriate legislation. And when runaway slaves, or unsettled paupers, come into the Commonwealth, the community needs no additional legislative protection; or if it does, can have it in proportion to its necessities. That kind of protection is not asked now, and it forms one of the objectionable features of the bill,

that has been proposed, that it seems to contemplate a state of things, clearly within the purview of existing laws, and an evil for which there is already ample and unobjectionable provision.

Your Memorialists do not deem it necessary to occupy the time of the Legislature, with any conjectures as to the object of the law now proposed. It is very distinctly stated, in the petitions that have been referred, as well as in the title to the last year's act; and though the provisions of the latter may be supposed to be apparently inadequate to the contemplated object, it is believed that they will be found in fact to be amply sufficient. The act reported last year, by the Committee of the House of Representatives, is entitled, "An Act *to prohibit* the migration of negroes and mulattoes into this Commonwealth;" and it is in the estimate of your Memorialists, quite immaterial, so far as their constitutional rights are affected, whether it operates directly or indirectly, such being its proposed object. Its object they submit is *prohibition*—its means, *prohibitory*. Such being its object, and such its means, they respectfully represent, that there is a grave constitutional objection to its enactment, which, in the view they have been led to form of it, cannot be removed. By Article IV. Section 2, of the Constitution of the United States, it is provided: "That the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." It is scarcely necessary, in the view of the Memorialists, to ask your honourable bodies to enquire, what has been the uniform construction of this clause; as it would seem to them indisputable, that it was meant to secure the citizen of one State at least perfect freedom of ingress to the other States; and such freedom of action there, as the citizens of those States respectively have. Your Memorialists have, however, been referred to a judicial construction of this section of the Constitution, by one of the ablest living expositors whom that instrument has, to which they will ask the attention of the Legislature. In the case of Livingston *v.* Tompkins:* Chancellor Kent said, that it meant "that the citizens of each State are entitled under the Constitution of the nation, to *free* ingress and regress, to and from any other State; and are entitled to *all* immunities of citizens in every state." In the convention for altering the Constitution of New York, this section received a similar, though still

* 4 Johns. C. R. 430.

more liberal interpretation. It was there contended, by the ablest constitutional lawyers in that distinguished body, at a time too of remodelling their own form of State government, when the argument of inexpediency could be most safely, and most strongly urged, that by this clause of the Constitution of the United States, the convention was prevented from depriving the coloured population even of the elective franchise. Into the force of this reasoning, or into the question, how far a state Constitution, in which the right of voting were withheld, would conflict with the Constitution of the Union, your Memorialists have no wish to go. It is a subject they have no occasion to consider. But what is important, beside the high authority of such an exposition, is the result, and the adoption into the new Constitution of a clause, to which your Memorialists would ask the special attention of the Legislature. By Article IV. Sect. 1, of the Constitution of New York, it is provided, that " every man of colour, who shall have been three years a citizen of the State, and for one year next preceding any election, shall be seized and possessed of a freehold estate of the value of two hundred and fifty dollars, over and above all debts and incumbrances charged thereon; and shall have been actually rated and paid a tax thereon, shall be entitled to vote in the town or ward in which he resides, for all officers that now are, or hereafter may be elective by the people." They are then citizens and qualified voters in the State of New York expressly. They are so by implication and well settled practice, in seven other states; yet, that they are so in one is sufficient for the argument: and being citizens not merely for protection, but for the enjoyment of political privilege, it is respectfully submitted, that it is not competent to the Legislature to *prohibit* their migration into this State, without a palpable violation of the Constitution of the United States.

Your Memorialists are aware that it may be said, that the act does not actually prohibit the immigration of coloured people; but that it is designed to regulate that species of population, when within the limits of the State, which is within the constitutional power of the Legislature. The answer to this is obvious: If it is not meant, and does not operate as a prohibition, it is manifestly no compliance with the petitions on which all this proposed legislation is founded. But even in this view, and conceding the dis-

tinction between *prohibition* and *internal regulation*, it is submitted that the constitutional difficulty is far from being removed. It has been stated what was the question agitated in the convention of New York, and what its decision. It will be seen at once how different the attitude of things was on that occasion, and how much more strongly every argument which was there used, for the concession of privilege, operates here for the immunity of the coloured man. The people of that State had with all the requisite forms convoked their immediate representatives to reconstruct their frame of government. The change was to be radical and complete, and the question of the regulation of the elective franchise, was necessarily among the first that were presented. It was urged, that expediency and conformity with public sentiment, required the convention to confine the elective franchise to the white population; but it was resisted, and, as has been stated, successfully, on the ground, that as the coloured population were recognized as citizens, and were entitled to vote in some of the States, the Constitution of the United States expressly prohibited their disfranchisement. What is however most material, and this is eminently worthy of the attention of the Legislature is, that even the argument against the extension of the elective franchise, conceded all that is relied on by your memorialists here. It was contended, and as your Memorialists are prepared to admit, with great force, that the clause of the Constitution of the United States, was intended to secure *rather personal*, than *political rights;* and that the meaning of the restriction was, not that the qualified elector of Vermont, for example, should, as such, be a qualified elector in New York or Pennsylvania; but, that the citizen of Vermont, when in New York or Pennsylvania, should have the same rights, and be as secure from molestation as the citizen of New York or Pennsylvania. This was the reasoning of those, who opposed the extension of the right of suffrage; and this is the reasoning on which your Memorialists claim protection for the citizens, of whatever complexion, of the other States, on whom the proposed prohibitory act is meant to operate. Admitting then, which they are far from doing, the distinction that may be attempted between this, as an act of prohibition, and an act of internal police, your Memorialists see no cause for relying less confidently on the constitutional provision to which they

have already referred. The question then arises, whether this would be a constitutional law, as applied to all or any portions of the citizens of this Commonwealth, between whom and the rest a line is to be drawn, unauthorised at least by the letter of the Constitution. If it be competent to mark this distinction between classes of your own citizens, then, and not till then, can it be applied to the same classes of the citizens of other States, coming within your borders. It may be said without fear of contradiction, that the Legislature of this State, has no constitutional right to impose restrictions on one portion of the citizens of other States coming here, which it cannot impose in the mode prescribed by this act, on *any one* of its own citizens. No security for good behaviour can, in due course of law, be required, without a previous oath, except in cases of imminent danger of breach of the peace, when a magistrate's own view is equivalent: and it may reasonably be denied, that there is a right to subject the coloured citizen of another State, to a penalty and restriction, from which *all* our own citizens are thus exempt. Is it too much to question the right to legislate penally on a portion of the citizens of other States, whom accident or convenience may lead within our limits, and to say, as this act does, that those who are guilty of a coloured complexion, if they are unable or unwilling to do what the Constitution has told them they need not do, are to be ignominiously punished as vagrants? It is, therefore, on the whole, contended most respectfully by your Memorialists, that whether this proposed law is intended as an actual prohibition or not, it is equally at variance with the Constitution of the Union; and that if there is no right to *prohibit* the migration of citizens of other States within your borders, there certainly can be none to inflict penalties from which all and every of your own citizens are free. As long then as the rights of the coloured man are secured or enjoyed, under the Constitutions of other States, so long has he the same immunities here.

But there is another point of view, from which this subject must be regarded, connected with the operation of the proposed law, on the resident coloured people of this State. The fourth Section of the Bill of last year, provides for the registering of every negro and mulatto in the Commonwealth, and prohibits their even temporary removal from one County to another, without a certificate of such regis-

try, under a heavy penalty;—and the act thus becomes a direct legislative recognition of a difference between the white and coloured residents, as respects personal rights, which has never before been attempted. Had your Memorialists no other inducement to remonstrate against the passage of this bill, they would do it for this reason alone. They have always cherished the belief, that they were citizens, and as such entitled to all the immunities of the white population—that they had the same freedom of thought, of speech, of action; and that within this Commonwealth, they could do what the white man can do, and go where the white man can go. Your Memorialists have no wish at this time, to go into an argument of their rights, under the Constitution, and have already disclaimed the pretension which alone makes that question an obnoxious one. It is a question, with the merits of which, every member of your Honourable bodies is doubtless familiar. In a memorial presented to the Legislature during their last session, and now on its files, your Memorialists invited public attention to this matter in detail; but, compelled as they are again to appear in the attitude of supplication and remonstrance, against a violation of what they have been taught to believe to be their rights, they can only ask the worst enemy the coloured freeman has, to point out the word in the Constitution, or Bill of rights, that says they are *not* citizens, and then to say, on what principle of natural justice, he can work disfranchisement and penalty, not by construction, but by interpolation. Does the Constitution recognize that intermediate state of social being, to which the friends of this Bill would reduce them? It says expressly the reverse; and saying, as it does that *every* freeman complying with certain conditions, shall be a citizen in the broadest sense of the word, it says more than your Memorialists contend for, and throws the burthen of implication elsewhere. The phraseology of the Constitution was neither unadvised nor inconsiderate. There were many free blacks in the Commonwealth, at the time of its adoption. The word "freeman," as a generic term of wide significancy, was familiar to the individuals who framed that instrument;—and the existence and condition of the free black population, were formally brought within the view of the Convention, as will be seen by the Journal. But more than that—There was fresh in the recollection

of that body, a statute, which your Memorialists are sometimes led to fear, is fading fast in memory, the Abolition Act of 1780, then but ten years old; and it was not then forgotten, that the representative voice of this Commonwealth, had deliberately said; "that it was not for them to enquire why, in the creation of mankind, the inhabitants of the several parts of the earth are distinguished by a difference of feature and complexion," and had pronounced that all persons of every nation and colour, should be "deemed, adjudged, and holden to be freemen and free women." Such is the language of the Act of Abolition; and the Constitution adopting the same phraseology says, that every freeman, having a residence, and being assessed in the manner specified, and paying taxes, shall be an elector. That record of contemporaneous exposition is not yet obliterated from the Statute Book: and till your Memorialists can be shown, that the *freeman* of the Constitution is a different being from the *freeman* of the Act of Abolition; and who, or what the *freeman* of the Act of Abolition is, if not the *freeman* of the Constitution, they hope they may at least claim the rights of security and protection.

But they have other rights than these; and besides being citizens for immunity, which is all they now contend for they, in one sense at least, are citizens for privilege; and have been so adjudged by the highest judicial tribunal of the State. In how many cases this has been done incidentally, your Memorialists will not pretend to say. One instance of a direct recognition, involving too the executive as well as the judiciary, they will however specify: by the Act of 1791, giving the Supreme Court, the Attorney General, and the Governor, authority to incorporate literary, charitable and religious associations, they are expressly limited to associations of *citizens;* and under that Act, construed as it has been, most cautiously in this very particular, a very great number of associations of *coloured citizens* have been incorporated.

Your Memorialists have avoided examining the details of the bill proposed, for the obvious reason, that they believed that such legislation, as it involves, could and ought to be opposed on higher ground; and because, even if exceptionable details were amended, the main objection would still exist. There is in it, however, much that is singularly invidious, to some points of which they will call the attention of the Legislature. By the 2nd Section, any emi-

grant coloured person, who does not give the security required by the preceding section, may be arrested by a constable, either on his own view, or on information of any other person, and taken before an Alderman or Justice of the Peace, who *may inflict* such punishment as is now directed in the case of vagrants; and this penalty is extended in certain specified cases, to the resident blacks. This provision is, in every view objectionable. It authorises an arrest without previous oath; and it infringes fatally with the constitutional right of trial by jury. Where, your Memorialists will ask, is the provision by which the coloured man, under this Act, can have the benefit of a jury trial? There is no provision for an appeal; and it is not enough to say, that the right of appeal is an incident. Whatever weight such an answer might have in a judicial consideration of this question, it can have none, when suggested on a question of incipient legislation. It may be truly said, that in this point of view, this Act inflicts the penalties of the vagrant, without his privileges. By the 1st Section of the Act against vagrancy, a regular mode of trial is prescribed, and adequate and regular legal proof is required; and by the 3rd Section, a right of appeal to the Court of Quarter Sessions is secured; of both of which rights, the coloured man, under this Act, is deprived. The phrase is perfectly distinct and unequivocal, that when arrested and compelled to prove his own innocence, (not to encounter legal evidence of guilt,) if he fail, the justice *shall inflict such punishment* as is now directed in the case of vagrants. But further, abject and hopeless as his case thus is, in comparison of that of "the rogues, vagabonds, and other idle and disorderly persons," contemplated by the Act against vagrancy, it must be remarked, that by this Act the condition of the free coloured people is even worse than that of the runaway slave. It is not necessary to call the attention of the Legislature to the provisions of the Act of 1826, on the subject of fugitive slaves, all of which, however, whether as respects the oath on which the warrant of arrest issues, and the evidence to authorise a conviction, are far more favourable than this Act, but it is perfectly within the recollection of the Legislature, for the remedy of what evil that Act was passed. It was to prevent the incautious arrest and removal of fugitive slaves, which is equivalent to conviction under this Act. It took the cognizance of the question of property from the Alderman and Justices, and

gave it *exclusively* to the Judges. Yet the poor privilege which a runaway slave has, of being tried before a higher Magistrate, is by this Act taken away from the respectable free coloured man, who if an emigrant, who is unable to give legal security, ($ 500,) for his good behaviour, or if a resident, who moves twenty miles from his home, without a certificate, which the carelessness of an Assessor may deprive him, is liable to be arrested and punished by imprisonment of a month, at hard labour, in the common goal, at the joint caprice of any Constable and Justice of the Peace, within whose little jurisdiction he happens to pass. He has no right of trial by jury as the vagrant has; not even the poor comfort of being sentenced by a Magistrate of higher commission, as the runaway slave has. It should be remembered too, that by the 11th Section of the Act of 1826, the Abolition Act, with all its essential provisions, is fully recognized, and its clauses expressly secured. In the Bill now before the Legislature, that great Act seems to have been forgotten, especially that provision of it, which declares that the offences and crimes of negroes and mulattoes, as well slaves and servants as freemen, shall be enquired of, adjudged, corrected and punished in like manner as the offences and crimes of the other inhabitants of this State are, and shall be enquired of, adjudged, corrected and punished, and *not otherwise;* except that "a slave shall not be admitted to bear witness against a freeman."

With this statement of their views on this to them most interesting subject, and in a spirit of perfect acquiescence to the will of any portion of the constituted authority of the country, your Memorialists submit this matter for the consideration and decision of the Legislature. All that has been said by them, is uttered in a spirit of gratitude, for all that they enjoy; and in the hope, that they may not live to find that spirit changed, and to wish their lot had been cast elsewhere. They cannot believe such a result probable. They are, many of them, individuals, who have struggled long and anxiously with public prejudice, who have at least tried to lead lives of industry and morality; and who, looking emulously to the level on which the practice of those virtues will place any man, white or black, are to be told, if such a bill as is contemplated, passes, that all this has been a fruitless effort;—and however anxiously and honestly they may have laboured to raise themselves, on the scale of social being, it has been in vain; and that unless they, their

wives and children, comply with restrictions and regulations, utterly repulsive to their feelings, let their condition be what it may, they are in the harsh language of this Act, to be adjudged as *vagrants*, without even, as they have endeavoured to show, a vagrant's privilege. Signed,

JOHN BOWERS, *Chairman.*

JOHN B. DEPEE, *Sec'ry.*

On behalf of a large and respectable meeting of the people of colour, convened in the City of Philadelphia, January 15, 1833.

No. 446.—House of Representatives File.

READ MARCH 28, 1832.

An Act to prohibit the migration of negroes and mulattoes into this Commonwealth.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania, in General Assembly met, and it is hereby enacted by the authority of the same,* That from and after the first day of June next, no negro or mulatto person shall be permitted to migrate into and settle in this State, unless such negro or mulatto person shall, within twenty days after his or her arrival in any County of this State, enter into bond to the Commonwealth, with one or more sufficient surities, before the Clerk of the Court of Quarter Sessions of such County, to be approved by such Clerk, in the penal sum of five hundred dollars, conditioned for the good behaviour of such negro or mulatto person; and moreover, for the maintainance of such person, in case he or she should become chargeable as a pauper on any City, County or Township in this Commonwealth.

SECT. 2. *And be it further enacted by the authority aforesaid,* That if any negro or mulatto person shall migrate into, and remain within this State longer than the time prescribed by the first Section of this Act, without having complied with the provisions thereof, it shall be the duty of the Constable of any Ward, Borough or Township, either on his own view, or on the information of any other person, to arrest such negro or mulatto person, and take him or

her before some Alderman or Justice of the Peace, who shall inflict such punishment as is now directed in the case of vagrants.

Sect. 3. *And be it further enacted by the authority aforesaid*, That it shall be the duty of the Clerk of the Court, to furnish to each negro or mulatto person, who shall have given the bond prescribed by the first section of this Act, a certificate under the seal his office, of that fact, and if any inhabitants of this state shall employ, harbor or conceal, any such negro or mulatto person, who shall come into this State after the first day of June next, and continue therein, without having complied with the provisions of this Act, every such person shall forfeit and pay for every such offence, the sum of fifty dollars, to be recovered before any Alderman of a City, or Justice of the Peace of a County, in which such offence shall have been committed, by action of debt, in the name of the Commonwealth; one half of such penalty to be paid to the informer, and the other half to the proper overseer or directors of the poor, in such City, Township or County.

Sect. 4. *And be it further enacted by the authority aforesaid*, That it shall be the duty of each Assessor, of the several wards of the Cities, and the several Townships in this Commonwealth, in addition to the duties now required of him, to take a census of all negro and mulatto persons, who shall have resided within such Ward or Township, on or before the first day of June next; entering thereon the name, complexion, sex and age, of each, as nearly as he can ascertain it; and return such census to the Commissioners of the County. And the said Commissioners shall cause alphabetical lists of all such negroes and mulattoes so returned, and found resident in the County, to be made out; designating the name, complexion, sex and age of each; and the Ward or Township in which each has resided: and a copy thereof to be delivered to each Alderman and Justice of the Peace, and Clerk of the Court of Quarter Sessions, of such City or County. And every negro or mulatto who shall remove from one County to another, within this State, shall be liable to the penalties of the first and second sections of this Act; unless he or she shall produce the certificate of the Clerk of said Court, or of a Justice of the Peace, or Alderman of the district from which he removed, of his residence therein; of which said census shall be evidence.